IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In the Application of: Manfred HEIM et al.	Group Art Unit: 1794
Application Serial No: 10/509,178 (Now U.S. Patent No. 7,648,763)	Examiner: Shewareged, B.
Filing Date: September 27, 2004	Confirmation No.: 5202
	Docket No.: 2732-146
Title: Security Element and Method for Production Thereof	

PETITION TO CORRECT PATENT TERM ADJUSTMENT

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

Patentee requests that the Office revise the Patent Term Adjustment (PTA) calculated in connection with the above-identified now issued U.S. Patent. The number of days calculated by the Office was 364. However, under the recent Federal Circuit decision in *Wyeth v. Dudas*, Patentee believes that he is entitled to a patent term adjustment of 619 days.

As articulated by the Federal Circuit, the PTA should be based on the number of "A" delays plus the number of "B" delays minus any overlap between the two and the applicant's delay. *See Wyeth v. Kappos*, 591 F.3d 1364, 1369-1372 (Fed. Cir. 2010) (affirming a district court ruling finding that the PTO had been improperly calculating the PTA). "A" delays include time periods where the PTO has failed "to comply with various enumerated statutory deadlines: fourteen months for a first office action; four months to respond to a reply; four months to issue a patent after the fee is paid; and the like." *Wyeth v. Dudas*, 580 F. Supp. 2d 138, 139 (D.D.C.

Sept. 30, 2008). "B" delays include the time period between the 3 years from the filing date and when prosecution is closed. *Id.* at 140.

Thus, applying *Wyeth*, the proper amount of PTA is 619 days, <u>not 364</u>, and the patent is entitled to an additional 184 days of PTA. In this case, the following dates apply:

Filing date =	September 27, 2004
14 month date =	November 27, 2005
Three year date =	September 27, 2007
First Office Action =	August 10, 2006
Issue Date =	January 19, 2010
"A" delays =	489 days
"B" delays =	255 days
Overlap =	0 days
Applicant delay =	125 days
Total PTA =	First period + Second Period – Applicant Delay =
	489 + 255 – 125 = **619 days**.

Patentee, therefore, requests appropriate correction of the PTA. Authorization is hereby given to charge any fee deemed necessary in connection with the filing of this paper, or credit any overpayment, to Deposit Account No. 02-2135.

Respectfully submitted,

Date: <u>July 19, 2010</u>   By: <u>/Brian A. Tollefson/</u>
Brian A. Tollefson
Registration No. 46,338
Attorney for the Patentee
Rothwell, Figg, Ernst & Manbeck PC
1425 K Street, N.W., Suite 800
Washington, D.C. 20005
(202) 783-6040

BAT